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in three pages. It consists of inferences deduced from facts, which Mr. Eaton has borrowed, without comprehending them, from European geological works. At page 51, he says,

‘But immediately over the carboniferous state, (coal measures) we find oviparous vertebral animals. I have before me the relics of a *crotalus*, found by Dr. Rose of Montrose, Pennsylvania. Hence we infer, that oviparous vertebral animals were created soon after the bituminous coal and deposits were made.’

The origin of this passage appears to be as follows. Observing in Bakewell, the source of all his scientific *discoveries*, that oviparous vertebral animals are found in the deposits succeeding to the new red sandstone formation, and ignorantly supposing that oviparous reptiles of the present surface would serve his turn as well as the marine oviparous quadrupeds of which Bakewell speaks, he carefully keeps all the saurians out of sight, and with an old piece of an *orthocera* in his hands, pretends that this discovery of oviparous vertebral animals succeeding to the coal formations, is an inference made by himself, from a rattle-snake found in one of the formations of his fourth series. A rattle-snake ! This exceeds the Mastodons.

We will not, however, pursue this investigation farther. We regret that a sense of duty to science has compelled us to perform so ungrateful a task ; but at a period when a general inclination for the cultivation of natural history is visibly increasing, we cannot shut our eyes to the evil consequences, that must result from the circulation of so much error amongst the ingenuous young men of the country. We have been actuated solely by regard for the interest of science, and should be the last persons who would take pleasure in wantonly exposing Mr. Eaton or any other individual.

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ART. X.—*Imprisonment for Debt.*

*Fifth Annual Report of the Board of Managers of the Prison Discipline Society.* Boston, 1830.

The general object of the Prison Discipline Society,—the improvement in the state of prisons in reference to the comfort, and particularly the moral character of their inmates,—is of a nature to command the respect and sympathy of every friend of humanity. The assiduity and success with

which the Society have labored in this good cause, are apparent from several previous Reports, as well as from the one before us; and we trust that they will be sustained in future, as they have been thus far, by that large and liberal patronage, which alone can enable them to give full scope and effect to their benevolent intentions. Our present purpose, however, is not so much to enlarge upon this branch of the operations of the Society, as to advert to that portion of the Report before us, which is occupied by a statement of facts and opinions on the subject of *Imprisonment for Debt*. This feature in our civil institutions has for some years past been attracting the public attention more and more strongly; and it seems to be now almost universally admitted, that the present system imperiously demands a reform, although there is still much difference of sentiment as to the extent of the evil, and the nature of the remedy. We have not the presumption to suppose, that the hasty suggestions which we may offer will have any tendency to settle this difference; but by bringing to the view of our readers some of the lucid statements and weighty considerations contained in the Report, we may hope to contribute something towards the formation of that enlightened public opinion, which must ultimately decide upon this as upon every other question of general interest. We shall first extract a passage of the Report, which gives some idea of the number of persons who are annually imprisoned for debt, and of the efficacy of this process in enforcing payment.

‘Returns have been received from nearly one hundred Prisons in the United States, showing *how many* persons were imprisoned for debt during the year ending December 30, 1829; for what sums they were imprisoned; how much time was lost in Prisons; how many were discharged by the creditor or his attorney; how many paid the debt; how many took the poor debtor’s oath; what was the whole amount of debt; what was the whole amount of costs; and who supported the debtor in Prison.

‘The letters received from the sheriffs of different counties, and different and distant States, containing this information, merit the particular and grateful acknowledgements of the Society, for the labor bestowed in examining the records of the Prisons, to collect it. Many of the letters also are valuable, inasmuch as they contain an expression of the opinion of practical men, who have had the best opportunities of observation, in regard to the operation of the present laws on the subject of imprisonment for debt.

‘ We have also received letters from judges, lawgivers, and philanthropists, expressing their opinion on this subject.

‘ The following general remarks are supported by the first class of letters, to which we have referred ;

‘ 1. *The number of persons imprisoned for debt in the Northern and Middle States is very great.*

‘ During the year ending December 30, 1829, there were imprisoned for debt in Concord, N. H., 31 ; in Taunton, Mass., 126 ; in Worcester, 271 ; in Boston, 1211 ; in East Greenwich, R. I., 80 ; in Newport, R. I., 78 ; in Pennyan, N. Y., 103 ; at Courtland Village, 112 ; in Buffalo, 338 ; in the city of New York, in 1828, 3,000 ; in Philadelphia, during 8 months, ending February 25, 1830, 817 ; in Baltimore, in 1829, 944. As nearly as we can ascertain from the returns which we have received, the number imprisoned for debt annually is, in Massachusetts, 3,000 ; in New York, 10,000 ; in Pennsylvania, 7,000 ; in Maryland, 3,000 ; and in the other Northern and Middle States, nearly as above in proportion to the population.

‘ 2. *The number of persons imprisoned for debt, compared with the number imprisoned for crime, is very great.*

‘ In Worcester, Mass., the debtors were to the criminals as 3 to 1 ; in Rhode Island, as 4 to 1 ; in Pennyan, N. Y., nearly as 5 to 1 ; at Courtland Village more than 8 to 1 ; at Belvidere, N. J., as 5 to 1 ; at Flemington, N. J., as 6 to 1 ; in 17 Prisons in the Northern and Middle States, nearly as 5 to 1.

3. ‘ *The number of persons imprisoned for small debts is very great.*

‘ In Philadelphia alone, the number of persons imprisoned in eight months, ending February 25, 1830, for less than one dollar each, was thirty. In eleven other Prisons, from which we have heard, there were imprisoned, during the year ending December 30, 1829, for less than one dollar each, *thirty-two*.

‘ 4. ‘ *The number of persons imprisoned for more than one, and less than five dollars each, is still greater.*

‘ In thirty Prisons, from which we have heard, there were imprisoned, for more than one and less than five dollars each, *five hundred and ninety-five*.

‘ 5. *The number of persons imprisoned for more than five, and less than twenty dollars, is very great.*

‘ In thirty-two Prisons, from which we have heard, there were imprisoned for more than five and less than twenty dollars, two thousand one hundred and eighty-four.

‘ 6. *The number of persons imprisoned for more than twenty, and less than one hundred dollars, is not one third as great as the number imprisoned for less than twenty dollars.*

‘ In thirty-two Prisons, from which we have heard, the num-

ber imprisoned for less than twenty dollars each, was 2841; for more than twenty, and less than \$100,—902.

‘7. *The number of persons imprisoned for more than one hundred dollars each is very small, in comparison with the number imprisoned for less than twenty dollars.*

‘In fifty-three Prisons, from which we have heard, the whole number imprisoned for more than one hundred dollars each, was four hundred and sixteen, or only as one to seven, compared with the number imprisoned for less than twenty dollars.

‘8. *The time lost in Prison is very considerable by those who are poorly able to lose it.*

‘In fifteen Prisons, from which we have heard, in the Northern and Middle States, the persons imprisoned for debt,

For less than one day, were	269
For more than one, and less than five days,	323
For more than five, and less than ten days,	203
For more than ten, and less than twenty days,	154
For more than twenty, and less than thirty days,	83
For more than thirty days,	431

‘Total amount of time lost in fifteen Prisons, nineteen thousand, nine hundred and eighty-seven days.

‘9. *While so much time is lost in Prison, it is a very fruitless business as a means of compelling payment.*

‘In seventeen Prisons, from which we have heard, out of two thousand and fifty-seven persons imprisoned, the records show only two hundred and ninety-four who paid the debt.

‘10. *The number of persons discharged by the creditor or his attorney, according to the records, is more than three times as large as the number of those who pay the debt.*

‘In seventeen Prisons, from which we have heard, as already stated, two hundred and ninety-four paid the debt, and one thousand and nineteen were discharged by the creditor or his attorney.

‘11. *The number of persons discharged by taking the poor debtor's oath, is more than twice as great as the number of those who pay the debt.*

‘In the seventeen Prisons above mentioned, two hundred and ninety-four paid the debt, and seven hundred and forty-four took the poor debtor's oath.

‘12. *The amount paid, according to the Records, in consequence of imprisonment, is not one half the value of time lost at \$1 per day.*

‘In seventeen Prisons, from which we have heard, the amount paid, in the year ending December 30, 1829, as nearly as can be ascertained, was seven thousand nine hundred and ninety-two

dollars; the value of time lost in fifteen Prisons, during the same time, at \$1 per day, was nineteen thousand nine hundred and eighty-seven dollars.

‘13. *This is not only very fruitless, but very expensive business to the creditor.*

‘We have reason to believe, that, in most cases, in which persons are discharged from Prison by the creditor or his attorney, or by the poor debtor’s oath, the costs are paid by the creditor; and we have already seen, that in seventeen Prisons there were discharged by the creditor or his attorney, . . . . . 1019

By the poor debtor’s oath, . . . . . 744

By paying the debt, . . . . . 294

‘We have made the inquiry of a number of the respectable men of our acquaintance, whether they ever imprisoned a man for debt. The general answer has been, Yes; once or twice, and we lost the debt, and paid the costs.

‘14. *The operation of the laws, in regard to imprisonment for debt, is very different in the Northern and Southern States.*

‘In seventeen Prisons heard from in the Northern States, the number of persons imprisoned during the year ending December 30, 1829, was *two thousand seven hundred and forty-two*.

‘In the same number of Prisons in the Southern States, only *thirty-five*.

‘15. *There are examples of amelioration and abolition.*

‘In Massachusetts, there is a law which forbids the imprisonment of any debtor for less than five dollars. A similar law, in the other Northern and Middle States, would have saved from imprisonment, during the last year, in eighteen Prisons, from which we have heard, four hundred and thirty-one persons. The great opposition to this law is said to have come from groceries and grog shops.

‘There is a law in New-Hampshire, which forbids the imprisonment of any debtor for less than \$13,33. A similar law, in the other Northern and Middle States, would have saved from imprisonment, during the last year, in eighteen Prisons, from which we have heard, one thousand four hundred and fifty-four persons.

‘There is a law in Massachusetts, which requires the creditor to pay the board of the debtor. This law is said, by several of the jailers, to have diminished the duration of imprisonment for debt about one third.

‘A very shrewd and observing jailer, in a Prison where more than one thousand persons are imprisoned annually, remarked, that many cases of imprisonment for small debts would be prevented, if the creditors were obliged to make oath, that the debts were *true debts*; as in South Carolina.

*'In Kentucky and Ohio, imprisonment for debt is abolished. A similar law in the Northern and Middle States, would have saved from imprisonment, during the last year, as nearly as we can ascertain, about fifty thousand persons.*

*'16. The laws and public opinion appear to be at variance on the subject of imprisonment for debt.*

*'We have already seen, to some extent, what is the operation of the laws. We now give an abstract of the laws of several States, where the evils of imprisonment for debt seem to be greatest. And immediately after the abstract, we shall give what we consider an expression of public opinion.'*

The following letter to the Secretary of the Society, from the benevolent individual so generally and so honorably known by the assumed name of *Hamilton*, whose indefatigable exertions for the promotion of every good work have so justly endeared him to his countrymen, gives some further very interesting details on the same subject.

*'Extract from a Letter signed Hamilton, dated Philadelphia, March 5, 1830.*

*'The cruel effects, and the suffering resulting from imprisonment for debt, and its almost universal inefficacy in producing satisfaction of the claims of the creditor, have for a long time attracted public attention, and been depicted in vivid colors by different writers, in the hope of removing the evil. But improvements of every kind, however plain and palpable, travel at a snail's pace, when they have to encounter inveterate prejudice. It has often happened that it required half a century to remove a crying evil, about which no two enlightened men could for a moment differ in opinion; and cases are by no means rare, in which half a century has been found inadequate for the purpose. The abuses of the court of Chancery in Great Britain, and its ruinous delays of justice, almost equivalent to a denial, are strongly in point.*

*'The evil of imprisonment for debt has been somewhat mitigated in some of the States; but in others it remains in all its frightful enormity. In this State, no man, who can give adequate security for his appearance at the insolvent court, need go to jail. Nevertheless, hundreds are sent to jail for want of security. In Massachusetts, a law is in force, how long I cannot tell, which prohibits imprisonment for debts under five dollars.*

*'A most astounding and revolting fact has been just presented to the public by the Boston Prison Discipline Society, (one of the most philanthropic and beneficent societies in the country),*

respecting the state of imprisonment for debt in the city of New-York. It appears,

‘On the authority of Mr. Rowen, keeper of the debtor’s apartment in that city, that the number of cases of imprisonment [for debt] during the year 1828, was 1085 ! The debts together amounted to \$25,409 ; the damages to \$362,076 ! the amount paid in jail, \$295 ! which bears to the amount of actual debt, the proportion of 1 to 86 ! and to the amount of debts and damages, of 1 to 1313 !—*Fourth Report, page 17.*

‘Probably, among the variety of abuses attendant on, and inseparable from, civil society, a more monstrous or shocking fact cannot be produced, or one more at variance with our boasted civilization.

‘The facts in this connexion in our city are not quite so revolting ; but they are sufficiently so to call for a radical remedy. But a short law of twenty lines, abolishing imprisonment for debts under five dollars, which might be passed in three days, would remove some of the most crying enormities of our present system.

‘The number of persons imprisoned in the debtor’s apartment in this city, from June 6, 1829, until February 24, 1830, was 817, of whom there were

30 whose debts were below 1 dollar.  
 233 above 1 and below 5 dollars.  
 174 above 5 and below 10 dollars.  
 140 above 10 and below 20 dollars.  
 142 above 20 and below 100 dollars.  
 98 above 100 dollars.

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Of 252 of these unfortunate people, the debts were \$663 and the costs \$448.

‘Of 64, the debts were \$58 and the costs \$120 !

‘That this state of things calls for a remedy, will not be questioned. The Massachusetts law is a remedy, plain, simple, and effectual, as to the most grievous portion of the evil ; and it is to be hoped it will be applied without delay.

‘It is highly probable that such a law would considerably diminish the poor rates. The 263 persons above referred to, whose debts are below five dollars, are of the class who depend wholly for their own support, and that of their families, on their labor. Their extreme poverty precludes the idea of their being able to make any provision for their families during their imprisonment ; and the consequence is, that that support, in the interim, devolves on the overseers of the poor.’

Such are the nature and extent of the evil. As respects

the remedy that ought to be applied, we are presented in the Report with a number of opinions of great authority. The Secretary of the Society addressed a circular letter to several gentlemen of distinction, requesting a communication of their views on important points connected with this subject, and received from some of them answers of a very interesting character, which are here presented. The most important of these have been reprinted in other quarters, but we nevertheless deem it expedient to quote them, in order that while the feelings of the community are agitated by the discussion of the question, the views that are entertained of it by the ablest men, and the most competent judges, may be kept as much as possible before the public, as a guard against extravagance and error. The opinion of Mr. Webster on any subject connected with his professional pursuits, probably carries with it, at present, as much weight as that of any person of his age in the country. His letter is as follows;

*‘Letter from Hon. Daniel Webster, dated Washington, May 2, 1830.*

‘SIR—I have received your letter of the 19th of April, asking my opinion upon several questions, all relative to the subject of imprisonment for debt. I am quite willing to express my general opinions on that interesting subject, although they are not so matured as to be entitled to influence other men’s judgments. The existing laws, I think, call loudly for revision and amendment. Your first four questions seek to know what I think of imprisonment for small sums. I am decidedly against it; I would carry the exemption to debts of thirty or forty dollars, at least. Individual instances of evil or hardship might, I am aware, follow from such a change; but I am persuaded the general result would be favorable, in a high degree, to industry, sobriety, and good morals, as well as to personal liberty.

‘You ask, in the next place, what I think of imprisonment for debt in any case where there is no evidence of fraud. Certainly I am of opinion that there should be no imprisonment for debt, where it appears that no fraud has been practised, or intended, either in contracting the debt, or in omitting to pay it. But, then, it seems to me, that, when a man does not fulfil a lawful promise, he ought to show his inability, and to show also that his own conduct has been fair and honest. He ought not to be allowed merely to say he cannot pay, and then to call on the creditor to *prove* that his inability is pretended or fraudulent. He ought to show why he does not and cannot fulfil his contract, and to give reasonable evidence that he has not acted fraudulently: and, this

being done, his person ought to be held no longer. In the first place, the creditor is entitled to the oath of his debtor; and, in the next place, to satisfactory explanation of any suspicious circumstances.

‘There are two sorts of fraud, either of which, when proved, ought to prevent a liberation of the person, viz: fraud in contracting the debt, and fraud in concealing, or making way with, the means of payment. And the usual provisions of the bankrupt act ought to be added, that no one should be discharged, who is proved to have lost money in any species of gaming; and I should include, in this class, *all adventurers in lotteries*. Having tendered his own oath, and made just explanation of any circumstances of suspicion, if there be such, and not having lost money by gaming, the debtor ought to be discharged at once; which answers another of your questions; for the detention of thirty days, before the oath can be taken, appears to me wholly useless.

‘You are pleased to ask, whether, in my judgment, Christians can, with a good conscience, imprison, either other Christians or infidels. He would be very little of a Christian, I think, who should make a difference, in such a case, and be willing to use a degree of severity towards Jew or Greek, which he would not use towards one of his own faith. Whether conscientious men can imprison any body for debt, whom they do not believe dishonest or fraudulent, is a question which every man, while the law allows such imprisonment, must decide for himself. In answer to your inquiry, whether I have found it necessary to use such coercion, in regard to debts of my own, I have to say, that I never imprisoned any man for my own debt, under any circumstances; nor have I, in five and twenty years’ professional practice, ever recommended it to others, except in cases where there was manifest proof, or violent and unexplained suspicion, of intentional fraud.

‘Imprisonment for debt, my dear sir, as it is now practised, is, in my judgment, a great evil; and, it seems to me, an effectual remedy for the larger part of the evil is obvious. Nineteen twentieths of the whole of it would be relieved, in my opinion, if imprisonment for *small debts* were to be abolished. That object I believe to be attainable; and to its attainment, I think, the main attention of those who take an interest in the subject should be directed. Small credits are often given, on the confidence of being able to collect the debt by the terrors of the jail; great ones seldom or never.

‘Three simple provisions would accomplish all, in my opinion, that may be considered as absolutely required to a just state of the law, respecting imprisonment for debt in Massachusetts.

‘1. That no imprisonment should be allowed, when the debts, exclusive of costs, did not amount to thirty dollars.

‘2. That there should be no necessity of imprisonment for thirty days, as preliminary to taking the poor debtor’s oath; nor any longer detention than such as is necessary to give parties notice and time to prepare for examination; and that a convenient number of magistrates, in every county, should, for the purpose of administering the oaths, be appointed by the government; and that such magistrates should be clothed with such further powers as might be thought expedient, in order to enable them to make a thorough investigation of the fairness or fraud of the debtor’s conduct.

‘3. That in cases where the debtor had been discharged, if the creditor would make oath to newly discovered evidence, proving original fraud, or, to his belief, that the debtor had subsequently received property, and concealed or withheld the same from his creditors, it should be competent to such creditor to have investigation of such charge, and, if made out, to have execution against the person, and if not made out, that the creditor should pay the cost of the proceeding.

‘Other provisions might doubtless be useful; but if these three alone could be obtained, they would, in a great measure, clear the jails of debtors, and give general satisfaction, I have no doubt, to creditors.

‘I ought to add, that the imprisonment of females in the common jails, for mere debt, is a barbarism which ought not to be tolerated. Instances of such imprisonment, though rare, do yet sometimes occur, under circumstances that shock every humane mind. In this respect, the law ought, in my judgment, to be altogether reformed.’

The opinion of Dr. Channing—an authority in no way inferior to the one just cited—is given more briefly, but with equal or greater point, in a passage of his late Election Sermon.

*‘Extract from Dr. Channing’s Election Sermon.’*

‘I am shocked at the imprisonment of the honest debtor, and the legislation, which allows the creditor to play the tyrant over an innocent man, would disgrace, I think, a barbarous age. I am not less shocked by the impunity with which criminal insolvents continually escape, and by the lenity of the community towards those transgressors of its most essential laws.’

The following letter is from the Hon. Charles Jackson, whose early eminence at the bar was the admiration of his contemporaries, and whose early retirement from the bench, was the

severest loss, which the judiciary department of this Commonwealth has sustained since the death of Parsons.

*‘Extract of a Letter from Hon. Charles Jackson, dated Boston, May 18, 1830.*

‘DEAR SIR—The only just or reasonable motive for imprisoning a debtor seems to be to compel him to apply his property to the payment of his debts. If, therefore, he is about to abscond, and to remove his effects beyond the reach of his creditors, or if he fraudulently secretes or withdraws them, so that they cannot be taken by legal process, the creditor, I think, ought to have the power to arrest him, and to prevent him, if possible, from enjoying at ease, or spending in luxury, what he has thus unjustly acquired. But when he is unable to pay the debt, and has no property to be surrendered to his creditor, it is wholly useless as well as oppressive, to prolong his imprisonment. Such a measure, if considered as a punishment to the debtor, is very unequal and unjust, as it is inflicted without any regard to the magnitude of the debt, and without any distinction between a fraudulent debtor and one who is only unfortunate. I think, therefore, that imprisonment for debt ought never to be allowed, except in cases which I consider fraudulent; that is, when the debtor fraudulently or obstinately secretes or withholds his property. But as it is not easy to ascertain beforehand what cases fall within this description, it may be necessary to authorize the arrest of the debtor, making provision, at the same time, for an immediate discharge of his person, upon his surrendering all his property that is liable to attachment.

‘If a proper and convenient provision of this kind could be made, it would perhaps remove the principal objections to the existing laws; but so long as imprisonment for debt on mesne process, and on execution, is conducted as it now is, I am strongly of opinion, that it ought never to be allowed for small debts, so as to reach the poorer class of debtors. It would require more practical knowledge than I possess on this subject, to fix the amount of debt for which it ought to be allowed; but I should be glad to find, that it could be limited to fifty dollars. When a man whose living depends on his manual labor, is imprisoned for a debt which he is unable to pay, there is a loss to the community, as well as to the debtor himself, of the produce of the labor which he might have performed; and the creditor’s chance of receiving payment is of course diminished. If a debtor is unable to pay ten dollars, it seems to be the height of absurdity, as well as cruelty, to take him from his business, and to condemn him to idleness for a time long enough to have earned twenty dollars.

‘There is, perhaps, one advantage in allowing imprisonment for

small debts ; which is, that it tends to deter the poor from contracting debts ; and so far as it produces that effect, I believe that it is highly useful. But we daily see, that this is not an effectual remedy, and that many of that class will get credit where they can, though upon terms most oppressive to themselves. If these persons were wholly exempted from arrest and imprisonment, they would find it much more difficult to get credit than they now do. This would be beneficial, not only to themselves, but also to the class of creditors in general ; as these latter, by giving less credit, would probably, on the whole, lose less than they do under the existing laws.

‘As to the duration of imprisonment, if allowed at all, I should suppose thirty days much more than would be commonly necessary. All that must be required is time enough for the debtor to make out a statement of his property, and to surrender or convey it to the person designated in the law, and to undergo an examination, on oath, as to the truth of that statement. I see no objection to allowing a discharge, upon these terms, from arrest on mesne process, as well as on execution. It would further tend to prevent abuses in this respect, if arrest on mesne process were allowed for debt only, or for injuries to property, that are susceptible, in some degree, of a precise estimation ; to the exclusion of all cases of mere personal wrongs, and of claims for unliquidated and uncertain debts.

‘If imprisonment for debt is, as I think it is, useless, when used merely to compel the surrender of property, which ought to be applied to discharge the debt, it follows, that, in other cases, a Christian cannot, with a good conscience, make use of this process either against a fellow Christian or an infidel.’

We add the letter of Mr. Edward Everett, upon the character of which we are precluded by obvious considerations, from expressing an opinion.

‘*Extract of a Letter from Hon. Edward Everett, dated Charlestown, Mass., 4th. Sept., 1830.*

‘DEAR SIR—I have duly received your letter, requesting my opinion on several subjects connected with imprisonment for debt. I must leave it to those better acquainted with the practical effect of the existing laws, to make a discrimination between the operation of these laws, in reference to the *different sums* you have named. My view of the subject requires no such discrimination. But were I obliged to give a specific answer to your first question, “What do you think of imprisonment for debt for sums less than one dollar ?” I should say, I think it a disgrace to the community where it is tolerated ; and that a person, who would

deprive a fellow creature of his liberty for inability to pay that sum, ought himself to be sent to the State's Prison, till he had learned humanity, or rather to the Insane Hospital, till he was restored to reason.

'But I ought to recollect that even such imprisonment has been authorized by the laws of our ancient Commonwealth, and is now authorized by the laws and daily practice of some of the sister States; and that individuals are not justly chargeable with the iniquity of a system established by the law of the land, and sanctioned by custom. It is one of the worst effects of bad laws, that they corrupt public sentiment.

'It is said to have been remarked, by the venerable Attorney-General of the Commonwealth, on occasion of the late trial at Salem, that it was to be regretted that the common law had not, by the statute of 1 Ann, been brought a little nearer to common sense, in reference to the trial of accessaries, before the conviction of a principal. I fear there is too great reason to say, that we live under a system of laws, touching the relations of debtor and creditor, utterly at war, not only with common sense, but common humanity.

'Although crime may be connected with insolvency, yet insolvency is not of itself a crime. Where fraud has been committed, let that fraud be proceeded against under known laws, and punished, I care not how severely, so the bounds of reason and humanity are not passed. But inability to pay one's debts is itself no proof of crime. It may, and often does, arise from the act of God, and misfortune in all its forms. A man may become insolvent in consequence of sickness, shipwreck, a fire, a bad season, political changes affecting trade at home and abroad; or, being wholly prosperous in his own business, he may be involved in the ruin of his debtor. In the eye of the law of Massachusetts, a man's inability to meet his obligations, produced in any of these ways, is a crime punishable by imprisonment.

'Suppose a Legislature were to pass a law, that whoever should have a ship cast away, or a ware-house burnt down, should be imprisoned thirty days. What would be thought of their humanity? what of their sanity? Such, however, in substance, is the law of the Commonwealth of Massachusetts. The absurdity of such a system is as glaring as its cruelty.

'It is objectionable on another ground. To deprive a citizen of liberty is one of the highest inflictions of penal justice. Next to capital punishment, it is the most infamous punishment known to our law. The power of wielding this formidable weapon ought to be lodged exclusively in the hands of the magistrate. Grave public reasons should alone decide when it should be employed.

The present law submits to the discretion, the caprice, and the passions of the creditor, whether he will or will not subject a citizen to this odious infliction of penal justice. There are men in the community who make a livelihood from buying up bad debts. The State puts its sheriffs, and constables, and the keys of its Prisons, under their control, and they daily wield their dreadful power, from motives of interest; sometimes without the possibility of deriving benefit; but more frequently with a studied and tantalizing choice of time and circumstances, such as to give to personal duress the character and effects of torture. Torture, in fact, it is; and many persons, no doubt, would rather lose the joint of a finger, or submit to a few turns of a thumb-screw in private, than be shut up in the wards of a jail.

‘Fortunately for the credit of the country at large, though to the discredit of Massachusetts, our law on this subject is behind the legislation of the majority of the States. Very few States in the Union deem so lightly of the value of the blessings which they secure to their citizens, as to allow an individual to deprive his neighbor of his liberty, for *thirty days*, for a debt of five dollars.

‘When the enormity and scandal of such legislation are considered, we can only wonder that it can subsist for a day in a community where the people make the laws, especially when we inquire what class of society is benefited by them. Creditors are not greatly benefited, as is notorious from the facts stated in the last Report of the Prison Discipline Society. In a Report made to a meeting of gentlemen assembled in Boston, a year or two since, to consider this subject, it is stated that “within the last twenty years, the costs that have accrued in suits against insolvents, have amounted to more than one million of dollars.”

‘It surely cannot be the interest or the wish of the mass of the people to lay such a tax for the purpose of filling the pockets of those benefited by the prosecution of petty debts.

‘Considered in connexion with the public good, and the cause of civil liberty, the facts disclosed in the last Annual Report of the Prison Discipline Society present matter of reflection painfully important. Seventy-five thousand freemen, in these United States, it is estimated, are annually subjected, under the existing laws, to the infamous punishment of a Prison! And the costs and damages exceed, in many cases, the amount of the debts for which they are imprisoned!

‘There are several governments called *despotic*, where no such outrage on reason and humanity is tolerated. That it is submitted to in this community, is a proof how much practical oppression a people will endure, who enjoy, in theory, the power of providing a remedy. The acts of the British government, which

drove our fathers to arms, were infinitely less grievous than the laws in question. Nor is there any question of national or party politics, that now excites the sensibility of the people of the United States, which so much concerns them as this subject, in regard to which so great an apathy prevails.

‘Harsh, however, as the expression may sound, if the people, possessing the means of a perfect and instant remedy in their hands, will not apply it, they ought to suffer. Were it not that the unfortunate class who suffer most—the poor and friendless—are unable effectually to make their wishes felt, and their rights respected, nothing would need to be said. A fortnight’s time, devoted to the subject by the General Court, would be amply sufficient to enact a statute, which would bring the law nearer to humanity and reason; and, if the people wish for such a statute, it is very easy to make their wish known and respected.

‘Wishing entire success to all judicious exertions to effect this end, I remain, &c.’

In the suggestions made in these letters, of the nature of the remedy to be applied to this great and acknowledged evil, the prevailing idea seems to be that of drawing a line of distinction between debts of different classes, and abolishing imprisonment for those of small amount. This plan has already been acted upon to a certain extent in several of the States. In this Commonwealth, and in Maine, imprisonment is not allowed for a debt under five dollars. Mr. Webster proposes, that the limit should be enlarged to thirty, and provision is made to this effect in a bill reported in the Senate of this State during the late session of the General Court, but which had not been acted upon when this article was written. In Maryland, imprisonment was abolished for debts under thirty dollars, by an act passed at the late session of the Legislature of that State. In New Hampshire, the limit is fixed at thirteen dollars, thirty-three cents. Kentucky and Ohio are the only States in which the practice has been abolished entirely. The adoption of this measure in those States, is probably to be attributed, in a great degree, to the unwearied exertions of Colonel R. M. Johnson, who has done more to awaken the public attention to this crying evil, than any other person in the country. We feel the more pleasure in doing justice to his benevolent intentions in this respect, inasmuch as we have had occasion, in a preceding number, to question the correctness of his, no doubt, equally honest views, upon another subject of considerable importance.

The distinction between large and small debts, to which we

have alluded, as the basis of the new regulations, which have been adopted in this and some other States, is obviously untenable in principle. Whether imprisonment for debt be regarded as a privilege belonging to the creditor, or as an inconvenience to be suffered by the debtor, there is plainly in theory no good reason to be given, why it should attach to one class of debts rather than another. We may go farther, and say with safety, that a distinction of this kind is not only not founded in any correct principle, but is actually contrary to natural justice. The only motive for allowing imprisonment for debt at all, must be the supposed advantage resulting to the creditor, from this mode of enforcing payment of his debt. But the distinction in question gives this advantage to a person who has lent a large sum of money, and takes it away from one who has lent a small one. In other words, it confers upon the wealthy, who want it least, a privilege which is refused to the poor.

The distinction is therefore in theory untenable, and even unjust, but it is nevertheless true, that the adoption of it may produce a great deal of practical good ; and if, as appears to be generally supposed, a reform predicated on this principle is the only one which the public feeling would admit in this part of the country, we should cheerfully give it our feeble support. The number of small debts is of course much greater than that of large ones, and of the cases of actual imprisonment, a very great proportion are for debts of trifling amount. This point is satisfactorily established in the above extract from the Report before us, where it is stated on authority, that ‘the number of persons imprisoned for more than twenty and less than one hundred dollars, is not one third as great as the number imprisoned for less than twenty dollars ;’ and that ‘the number of persons imprisoned for more than one hundred dollars each, is very small in comparison with the number imprisoned for less than twenty dollars.’ This being the case, the abolition of imprisonment for small debts, is, in other words, an abolition of imprisonment for debt in by far the greater number of cases, that actually occur in practice. It is obvious, therefore, that however untenable, or even unjust, may be the distinction in theory, the practical relief afforded by its adoption may be very considerable.

We should, therefore, as we have just remarked, very cheerfully concur in recommending it to the public, if it be in fact

impracticable to obtain a reform on a more consistent plan. But we are free to confess, that we can see no reason why the abolition of imprisonment for debt in all cases, where there is no fraud, should be a less popular measure than the abolition of imprisonment for small debts. We conceive on the contrary, that it ought to be in principle, and of course must be in fact,—whenever the subject shall be well understood,—a more popular one. The distinction, as we have shown already, is in favor of the rich and against the poor. It is therefore essentially unpopular. On the other hand, the rich, in whose favor the line is professedly drawn, can derive no practical benefit from the privilege, at least where the poor debtor's oath operates as a complete discharge of the debt. No person would attempt to enforce a large debt by a process, which would give the debtor, by a little sacrifice of personal comfort, the opportunity of getting rid of it entirely. We are at a loss to imagine in what portion of the community this distinction between large and small debts is to find the great favor, which it is supposed to possess. The rich, who are ostensibly benefited by it, have really no motive for wishing to retain it, and the poor, against whom it operates, cannot be supposed to desire its establishment. It is advantageous to no one, and if not practically oppressive, is at least entirely nugatory. We are, therefore, of opinion, that a proposal to abolish imprisonment for debt in all cases, would be more likely to gain favor in our legislative bodies and with the people at large, than the half-way measures, to which we have alluded. There are, doubtless, many persons who would object to any measure of this description, although the number is, we believe, already very small, and rapidly diminishing from day to day ; but these, if they have any correct ideas on the subject, must object equally to a partial and a total abolition ; while all who wish for any reform in this respect, ought, as far as any motive of principle or interest is concerned, to desire that it may be complete. Even the collecting lawyers, the only persons who have any real interest in sustaining the practice of imprisonment for debt, have no motive for preferring a partial to a total abolition, for if, as we have already remarked, the power of imprisoning for large debts is and must be in its nature merely nominal, the retaining of it would of course give the lawyers no additional business.

On the view which we take of the subject, no distinction

should be made, excepting between the cases which are, and are not, tainted with fraud. Imprisonment for debt should be wholly abolished. The laws already in force against the obtaining and retaining of property under false pretences, should be revised in such a way as to accommodate them better to the new state of things, which would result from such a measure. The great defect in this part of our jurisprudence now, is, that although the fraudulent debtor, or, to use a more appropriate term, the swindler, may be punished, the person whom he has defrauded has no means of recovering his money. After suffering the penalties which the law attaches to his offence, the offender may find himself at large with the fruits of his iniquity still in his possession. As a remedy for this evil, it would be necessary, in cases where fraud could be proved, to provide, that the body should be taken and held as a pledge for the forthcoming property. Under these circumstances many offenders would doubtless escape, because there are many cases where it may be next to impossible to prove a fraud, whatever certainty there may be of its existence; but this result is unavoidable under any system of legislation, and would not occur more frequently, if imprisonment for debt were entirely abolished, than it does now.

It is often objected, and by very discreet and judicious persons, that the abolition of imprisonment for debt, whether partial or total, would operate unfavorably by increasing the difficulty of obtaining credit. This might be to a certain extent a temporary inconvenience, but would prove in the end a real benefit. The universal prevalence of the credit system in this country is undoubtedly one of the worst features in the state of our society, and any change, whether of laws or manners, which would tend to counteract this system, would cut off a very fruitful source of poverty and wretchedness.

It is not, however, our present intention to treat this subject in great detail; but rather to submit for the consideration of our readers, the facts and opinions, which we have already quoted from this Report. As a practical evil affecting the personal comfort of the mass of the people, imprisonment for debt is probably more oppressive, than any of the positive inflictions of the worst administered governments. Where, for example, the system of *lettres de cachet* in France interfered with the happiness of one person, imprisonment for debt interferes, and to an equal extent, with that of ten, we might perhaps say with

safety, a hundred. It appears to us impossible, that it can ultimately be maintained under the growing intelligence and liberality of the times, and we confidently trust, that the present generation will not readily yield to their successors the honor of erasing this remnant of barbarism from the civil code of the country.

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ART. XI.—*The Water-Witch.*

*The Water-Witch, or the Skimmer of the Seas. A Tale,* by the AUTHOR of the *Pilot*, Red Rover, &c. In two volumes. Philadelphia, Carey & Lea, 1831. 12mo.

Since we last called the attention of our readers to the popular romances of our countryman, Mr. Cooper, they have been presented to the world with a rapidity, which scarcely allows us to examine one, before we receive intelligence of the arrival of its successor. So far as success can be received as an evidence of merit, their superiority must be considered as beyond question; the seal of public approbation having been set by acclamation upon some of them, and a liberal share of praise accorded to all. They have been translated into various languages, and read with as much avidity on the banks of the Danube, as by the dwellers amid the forests, and by the rivers of our western world; nor is it improbable, that future travellers will find them, as Mr. Walsh did those of Sir Walter Scott, beyond the farthest boundaries of the vast German empire. This, as Goldsmith remarked of a somewhat different testimonial, this is fame; and it cannot be denied, that the writer, whose works become the companions of the aged, and the delight of the young, in regions wider and more remote than the ambition of the most relentless conqueror ever aspired to subdue, may console himself for all the censure or reluctant praise of critics; as the great philosopher of Athens was compensated by the veneration of his fellow-citizens, for the strictness of the conjugal discipline which he endured at home. Still, though we are far from denying that success is in many cases, a fair test of excellence, it would not be safe to consider it as a conclusive proof of merit of the very highest order. It would probably be found on inquiry, that there are few romances of which a larger number of copies have been, and continue to be sold, than the *Scottish Chiefs*;